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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re RICHARD S., a Person
Coming Under the Juvenile
Court Law.

B295000

(Los Angeles County
Super. Ct. No. DK21978A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

RICHARD S. et al.,

Defendants and
Appellants.

APPEALS from orders of the Superior Court of Los Angeles
County, Stephen Marpet, Juvenile Court Referee. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant Richard S.

Linda B. Puertas, under appointment by the Court of Appeal, for Defendant and Appellant Shauna H.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Shauna H. and Richard S. (Father), mother and presumed father of now-two-year-old Richard S., Jr., appeal the juvenile court's orders summarily denying their petitions pursuant to Welfare and Institutions Code section 388¹ and terminating their parental rights pursuant to section 366.26. On appeal Shauna and Father contend the court erred in denying their petitions and terminating their parental rights without conducting evidentiary hearings. Father also argues the court erred in ruling he had failed to establish the parent-child-relationship exception to termination of parental rights pursuant to section 366.26, subdivision (c)(1)(B)(i). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Initiation of Dependency Proceedings and Removal of Richard

The Los Angeles County Department of Children and Family Services (Department) received a referral in February 2017 stating Richard had been born a few days earlier with gastroschisis, a condition in which an infant is born with his intestines outside his body. Richard underwent surgery to

¹ Statutory references are to this code.

correct the condition the day after his birth and was placed in the neonatal intensive care unit. The referral also stated Shauna had tested positive for methamphetamine twice during her pregnancy—in November 2016 and in February 2017, less than two weeks before Richard’s birth. Shauna tested negative for methamphetamine on four other occasions in February 2017, including at the time of Richard’s birth. Richard was also negative for methamphetamine when he was born. While the record states the cause of Richard’s gastroschisis is unknown, the treating physician indicated it may have been caused by Shauna’s methamphetamine use.

In an interview with a social worker Shauna initially denied using methamphetamine during her pregnancy but later admitted she had taken one “hit” of methamphetamine while pregnant. Shauna stated that, once Richard was discharged from the hospital, she hoped to live with her mother, Theresa Q., but still had not obtained Theresa’s permission. Shauna reported she had met Richard’s father in a drug rehabilitation program, and he had been sober for more than six months. She stated she was currently enrolled in an outpatient drug treatment program. Shauna told the social worker she was “done with drugs” and wanted to focus on being a mother.

Theresa told a social worker that she would not allow Shauna and Richard to live with her. She said Shauna was aggressive, violent and still abusing methamphetamine.

On March 3, 2017 the removal of Richard from his parents’ custody was authorized, although Richard remained in the hospital. On March 8, 2017 the Department filed a petition to declare Richard a dependent child of the juvenile court under section 300, subdivision (b)(1), alleging failure to protect based on

Shauna's drug use, Father's knowledge of Shauna's drug use and Father's history of criminal convictions, including convictions for possession of a controlled substance and violating a court order to prevent domestic violence. At the detention hearing the juvenile court found Father to be Richard's presumed father. Shauna requested that, if not returned to her custody, Richard be placed with family friend Jody B. upon his release from the hospital. The court found a prima facie case for detaining Richard and ordered him placed in the temporary custody of the Department, with discretion to release to Jody or an appropriate relative. The court also ordered reunification services for Shauna and Father, including referrals for substance abuse counseling, weekly random drug testing, parenting classes and individual counseling. Later that day the hospital discharged Richard, and he was released to Jody.

In a March 28, 2017 jurisdiction/disposition report and in subsequent last minute informations prior to the continued jurisdiction/disposition hearing, the Department stated Richard was doing well in Jody's care. Shauna and Father visited Richard together in Jody's home a few times a week for approximately an hour at a time during March 2017. At some point prior to June 2017 the monitored visits were moved to the Department's offices. On one occasion in May 2017 Shauna ended her visit early because Richard was asleep. On another occasion Shauna arrived 20 minutes late to a visit.

In an interview with the social worker Shauna admitted she began using methamphetamine approximately two years earlier; she said she used recreationally a few times a month but using was "not a necessity." Shauna insisted she had used methamphetamine only once during her pregnancy—in October

2016. She could not explain the positive test in November 2016, and she believed the February 2017 positive test was incorrect. Shauna stated she wanted to do whatever was necessary to reunify with Richard and intended to enroll in any required programs. Shauna tested negative for drugs and alcohol three times between late February and early April 2017. She failed to appear for four tests during that period.

After missing two appointments for an initial assessment with Behavioral Health Services in May 2017, Shauna appeared for her appointment but refused to sign the contract for services. Shauna attended drug court hearings but was not officially enrolled in the program. While she maintained she was enrolled in a drug treatment program at South Bay Human Services Center, Shauna failed to provide any documentation or details to the Department. The Department expressed concerns Shauna was minimizing her substance abuse and its effects on Richard.

The Department attempted to interview Father for the March 2017 report, but Father did not return the Department's messages. The Department reported Father had been arrested in January 2017 for misdemeanor brandishing and assault with a deadly weapon (a knife) and, as of June 2017, was incarcerated in relation to those offenses. Shauna had been present during the incident leading to Richard's arrest.

A combined jurisdiction/disposition hearing was held on June 8, 2017. The juvenile court sustained the section 300 petition² and declared Richard a dependent of the court. The

² The minute order for the June 8, 2017 hearing states, "Petition is ordered amended by interlineation as reflected on its face." However, the amended petition is not in the record on appeal, nor is the reporter's transcript for the June 8 hearing. It

court ordered family reunification services be provided to Shauna and Father and ordered monitored visitation twice per week for two hours each visit. Father remained incarcerated at the time of the hearing. The court ordered that, upon his release, Father and Shauna were to visit Richard separately.

Shauna's and Father's court-ordered case plans required individual counseling, parenting classes, substance abuse counseling and random drug tests once per week. In addition, Father was required to attend a 52-week anger management program, and Shauna was required to enroll in a 12-step program. The court specified the parents' individual counselors must address domestic violence issues and the effects of domestic violence and substance abuse on Richard.

2. The Six-month Review Hearing and Parents' Compliance with Their Case Plans

The six-month review hearing, originally scheduled for December 2017, was continued to March 2018 and set for contest. Richard continued to be placed with Jody, and the Department reported Richard showed a strong attachment to Jody.

As of September 2017 communication between Jody and Shauna had broken down, resulting in all visits being arranged by the Department. Shauna initially provided an approved monitor for the visits; however, at some point the Department learned Shauna was allowing individuals to attend her visits who

appears from the Department's subsequent reports that the petition was amended to include reference to Father's January 2017 arrest and resulting incarceration, as well as an allegation that Father's "propensity to criminal acts and use of illicit drugs remains unresolved."

had not been approved by the Department. At that point all visits were conducted in the Department's offices with Department monitors. When confronted about the unapproved visitors and the change to visitation, Shauna became hostile and refused to speak to the Department social worker.

As of November 2017 Shauna was visiting Richard at the Department's offices three times per week for two hours each visit (including a weekly 45-minute joint therapy session with Richard). In February 2018 Shauna's visits were reduced to twice per week so that Richard could spend his third weekly visit with Theresa. Shauna was actively engaged with Richard during visits and acted appropriately toward him. She brought him books and toys, changed his diaper, fed him, talked to him and played with him. In November 2017 the Department reported Shauna had "shown growth and understanding of child's needs." However, in March 2018 the Department reported Shauna acted inappropriately toward Jody and other caregivers who brought Richard to visits.

In the nine months between the jurisdiction/disposition hearing and the six-month review hearing, Shauna tested negative for methamphetamine 31 times and was a no-show seven times (mostly in the summer of 2017). Shauna attended weekly group substance abuse counseling sessions at the South Bay Human Service Center. As of August 2017 her counselor recommended further participation in the program. Shauna attended 62 Narcotics Anonymous meetings between October 2017 and March 2018.

Shauna completed a 12-session parenting class in July 2017 at Carlson Counseling and Psychotherapy and, as of February 2018, had attended 19 parenting classes at Harbor

Mandated Programs Incorporated. She also began individual counseling with Carlson in November 2017 but ceased those sessions after six weeks due to scheduling and insurance conflicts. Shauna submitted a letter from South Bay Family Health Care dated October 24, 2017 stating she had begun mental health treatment there on that same date. The letter did not contain any information regarding the type of treatment or the length of the program. Shauna also submitted a letter dated January 26, 2018 from Kenton Lane Psychotherapy stating she had begun individual therapy there on December 30, 2017. She had been attending therapy two hours per week, and her therapist stated she exhibited a “sincere desire to deal with her intense history in order to make and sustain real change.”

Shauna also attended weekly joint therapy sessions with Richard through Los Angeles County Department of Mental Health, TIES for Families South Bay. As of November 30, 2017 Shauna had attended 16 therapy sessions with Richard, and their therapist reported, “Richard is beginning to trust mother and look to mother for comfort.” The therapist explained Shauna had learned how to read Richard’s emotional and behavioral cues and had developed more confidence in responding to his needs. However, she observed Richard frequently appeared withdrawn during sessions with Shauna and would not respond to her. The therapist also stated Shauna had several times brought third parties to the therapy sessions despite not having discussed the individual’s attendance in advance with the therapist and not having received approval from the Department for that individual to visit Richard. Shauna also repeatedly brought unsafe toys to her sessions with Richard. The therapist opined Shauna needed continued supervision and training to ensure she

creates a safe environment for Richard. The therapist also conducted seven sessions with Jody and Richard, noting Richard had a “secure bond and attachment with [Jody] as he was calm, regulated and easily soothed and comforted.”

In March 2018 the TIES for Families therapist reported Shauna had missed several therapy sessions in January, February and early March 2018 and had not responded to the therapist’s messages. The therapist expressed concern that Shauna “has not met her therapy goals to address safety and supervision issues with Richard and yet her visitation continues.”

During this period of review the Department received several reports of instances in which Shauna exhibited concerning behavior. Shauna had been arrested for misdemeanor possession of a controlled substance on June 1, 2017—only one week prior to the jurisdiction/disposition hearing. Shauna did not report this arrest to the Department or the juvenile court, and it appears the Department did not learn of it until months later. In October 2017 the Department learned Shauna had recently posted to her social media page a picture of herself holding a crack pipe. During a January 2018 visit with Richard, the monitor was concerned Shauna was under the influence of a controlled substance because Shauna was “extremely jittery and shaking.”³ After the visit Shauna and a male friend followed the monitor home from the Department’s office, and the police were called. Based on these events, the Department expressed concern

³ The Department was unable to arrange an on-demand drug test for Shauna after this visit. However, because the visit was monitored and Shauna did not have custody of Richard, it was decided there was no immediate concern.

Shauna was still abusing drugs and recommended termination of reunification services.

Father was still incarcerated as of March 2018. He informed the Department he had not complied with his court-ordered case plan because there were no appropriate services available where he was incarcerated. The Department repeatedly attempted to reach Father's prison counselor but received no response. The Department reported Father had sent letters to his mother from prison that were concerning. In the letters Father admitted to being a drug addict and a "sick person."

The contested six-month review hearing was held on March 15, 2018. The juvenile court found by a preponderance of the evidence that continued jurisdiction was necessary. The court further found Shauna was in partial compliance with her case plan, had consistently visited Richard and had made significant progress in resolving the problems that led to Richard's removal. The court ordered continuation of reunification services for both parents.

3. The 12-month Review Hearing and Parents' Compliance with Their Case Plans

In April 2018 the Department reported Shauna had been minimally participating in her case plan objectives. She had failed to provide the Department with current information regarding services in which she was enrolled. Father was released from incarceration during this review period and, as of April 2018, had enrolled in a six-month outpatient drug treatment program at Behavioral Health Services Inc. The program included group classes on parenting and anger

management. However, as of May 2018 Father had failed to report to his parole officer as required.

Shauna and Father separately attended monitored visits with Richard twice per week at the Department offices in accordance with the order prohibiting them from visiting together. While Shauna's visits were consistent, the Department expressed concern regarding her behavior during visits. Shauna was repeatedly "rude, dismissive and inappropriate" toward Jody's adult daughter, who often brought Richard to his visits. On one occasion in early May 2018, Shauna and Theresa were visiting with Richard in Theresa's home. Theresa told Shauna she had befriended Jody and had spent time with her during some of her visits. Shauna became upset, aggressive and threatened to hit Theresa in the face. Theresa told Shauna to leave and called the police. Richard was in the room but asleep during the incident. As a result of the incident Theresa refused to monitor future visits.

Shauna continued to attend joint therapy with Richard once per week with TIES for Families. The TIES for Families therapist again expressed concern that Shauna was unable to communicate effectively and maintain a consistent therapy schedule.

Shauna tested negative for methamphetamine four times in March and April 2018. Father tested negative three times in April 2018. Father attended 16 narcotics anonymous meetings in March and April 2018.

The Department concluded Shauna's behavior toward Theresa indicated she had not addressed her anger management issues. The Department recommended the court terminate

reunification services for Shauna and continue services for Father.

During this review period a conflict arose regarding Richard's placement. In April 2018 Richard's attorney requested immediate placement with Theresa, and Theresa filed a section 388 petition seeking placement of Richard with her. Jody opposed Richard's removal from her care. Ultimately an agreement was reached by Theresa, Jody, the Department and Richard's counsel. The stipulation, as ordered by the court on May 14, 2018, provided Theresa and Jody were to be co-caretakers of Richard and would agree on a shared custody schedule. Jody was also deemed a de facto parent of Richard over the objections of Shauna and Father.

The contested 12-month review hearing was held on May 14, 2018. The juvenile court found by a preponderance of evidence that continued jurisdiction was necessary. The court also found Shauna and Father had partially complied with their case plans. The court ordered continuation of reunification services for both parents.

4. The 18-month Review Hearing and Parents' Compliance with Their Case Plans

During this period of review Richard remained placed with Jody. The Department reported Jody consistently assisted the Department in facilitating visits with Shauna and Father and had "graciously opened her home" to them for their separate monitored visits. Further, Jody facilitated visits with Richard's maternal and paternal extended family, including taking him to visit his maternal great-grandmother once per month and arranging visits with his paternal grandmother. Richard also spent one day per week with Theresa.

In an August 23, 2018 report the Department recounted a domestic violence incident that had occurred in early July between Shauna and Father.⁴ According to the accompanying police report, on July 1, 2018, Shauna suspected Father was cheating on her and tracked his phone to a residence in Redondo Beach. Shauna went to the residence and encountered Father in the driveway. When Shauna asked why he was there, Father threw his beverage at her. Father then grabbed Shauna by her hair, threw her to the ground and kicked her twice in the abdomen. Shauna retreated to her friends' vehicle; and Father threw his telephone at the car, breaking the windshield. Shauna told police this was not the first incidence of domestic violence between her and Father.⁵ Father was arrested at the scene. He was aggressive with police officers. Father was also suspected of stealing a vehicle that had been abandoned near the incident.

Father was subsequently charged with willful infliction of injury and unlawful taking or driving a vehicle. During the arraignment the criminal court entered a criminal protective order prohibiting Father from having contact with Shauna. The protective order was set to expire in July 2021.

The Department observed Shauna was continuing to make progress on her case plan objectives. She continued to test negative for methamphetamine during this review period. She

⁴ The report also referred to a second domestic violence incident that occurred later in July 2018 between Father and Shauna, but there are no details regarding the incident in the record.

⁵ The Department reported Shauna subsequently told Father's parole officer she had lied to police about what had happened on July 1, 2018.

also completed the parenting and substance abuse programs at South Bay Human Services Center. She was still attending individual therapy sessions with Kenton Lane for two hours each week; however, Shauna had not informed him of the domestic violence incident that occurred in July 2018. In July 2018 Lane reported Shauna was close to being discharged from therapy; however, three weeks later he stated she would not be discharged in the near future. He informed the Department social worker that he believed Shauna's "loyalty is with her son," but it was "difficult [to get] mother to do the work that he has requested of her." In a letter dated August 30, 2018, Lane reported that despite "Shauna's overly aggressive personality style . . . I believe she has 100% commitment to being a great Mom"

The Department again expressed concern over Shauna's behavior. Not only had she been involved in the July domestic violence incident, but also she had made derogatory and inflammatory remarks to the Department social worker. Shauna used racial and homophobic slurs in referring to the social worker and said that she "hopes that all children's social workers get AIDS and die."

The therapist who conducted Shauna and Richard's joint therapy sessions also expressed continued concerns regarding Shauna's behavior. The therapist reported Shauna appeared under the influence of a controlled substance in July 2018. Overall, however, the therapist observed Shauna's bonding to Richard was improving.

The Department's report attached letters from Theresa and from Shauna's grandmother stating Shauna was still using methamphetamine and Richard should not be returned to her. Theresa alleged Shauna and Father had been using synthetic

urine to pass their drug tests. Theresa also stated Father and Shauna were frequently violent with one another.

Father continued to participate in an outpatient drug treatment program at Behavioral Health Services where he had attended more than 20 group or individual sessions as of June 2018. Father enrolled in a residential drug treatment program at Pacifica house in August 2018; but he abandoned the program five days later, stating, "I can't do this shit anymore." He tested negative throughout May and June but failed to appear for any tests in July or early August 2018.

On August 21, 2018 Father made an unannounced visit to the Department's office. He informed the social worker that his father had just passed away and he would be leaving town for two weeks to handle his affairs. He stated he intended to re-enroll in an inpatient drug treatment program upon his return. Father also complained that he did not think Jody was properly caring for Richard and was preventing Father and Shauna from visiting him. Father began speaking loudly and aggressively. The social worker believed Father was under the influence of a controlled substance because he was not making eye contact and was fidgety and aggressive. The social worker also smelled alcohol on Father.

The Department characterized Shauna as being "marginally compliant" with her case plan during this period and expressed concern Shauna "has not learned anything from her individual therapy" and "has not been open and forthcoming about her recent incidents with father or [Theresa]." As to Father, the Department noted he was not enrolled in any services at the time of the report and had not visited Richard at all in July

and August 2018. The Department recommended termination of family reunification services as to both Shauna and Father.

The contested 18-month review hearing was held on September 11, 2018. Shauna's counsel stated Shauna had recently enrolled in a domestic violence program and requested additional time for Shauna to exhibit she is ready to reunify with Richard. Father's counsel also stated Father had enrolled in an intensive counseling program that would address parenting, domestic violence and substance abuse issues. The court explained the parents had been given well over the six months of services typically awarded for parents of children under the age of three and it was too late for the parents to be enrolling in new programs. The court found Father was in meager compliance with his case plan and Shauna was in partial compliance with hers. The court terminated reunification services and set a section 366.26 selection and implementation hearing for January 7, 2019.

5. The Section 388 Petitions for Modification and the Section 366.26 Hearing

On January 4, 2019 Shauna filed a section 388 petition requesting the court return Richard to her custody or grant her further reunification services with liberalized visitation. Shauna asserted she was "sober and had gained an understanding of domestic violence." She stated she had "established a safe environment for her child, and the child would benefit from return to the Mother's care or from having reunification services granted." The petition recounted that Shauna had attended weekly therapy sessions and parenting classes. It also stated she had attended anger management and domestic violence classes at the Human Institute Program. Attached to Shauna's petition

was a July 2017 letter from Carlson Counseling & Psychotherapy stating Shauna had completed a parenting class, a certificate of completion from South Bay Human Service Center stating Shauna had completed a breakthrough parenting program in April 2018 and documents showing negative drug tests.

Father also filed a section 388 petition on January 4, 2019 requesting return of Richard to his custody or reinstatement of reunification services with unmonitored visitation. The petition stated such a modification would “allow father the opportunity to build a healthy and positive bond and relationship with his child.” Attached to the petition was a December 2018 letter from Behavioral Health Services stating Father had re-enrolled in an outpatient treatment program and a letter from the Los Angeles Centers for Alcohol & Drug Abuse stating he was enrolled in a 52-week domestic violence program as of October 2018. The petition also attached two character reference letters praising Father’s efforts to reunify with Richard and a December 2018 letter stating Father had completed a three-month residential substance abuse program at L.A. CADA Allen House and had been transferred to recovery bridge housing. However, on January 2, 2019 the Department was informed Father left bridge housing after two days, claiming he needed to return to work. While not enrolled in any programs with L.A. CADA at the time, his counselor stated he still visited the facility regularly to stay connected.

Jody filed a letter with the court in advance of the section 366.26 hearing in which she asserted Shauna and Father engaged in “extremely concerning behaviors and their dubious lifestyle.” She stated her efforts to assist the parents with visitation and reunification had been met with combative,

harassing and threatening behavior. She claimed both parents had admitted to her they were still using methamphetamine and using synthetic urine to pass drug tests. Jody alleged that in late November 2018 Father had attacked a male friend of Shauna's and broken his eye socket. Father also reportedly slashed the tires of a visitation monitor's car because he was upset with Shauna.

The Department filed a report in preparation for the section 366.26 hearing. Included in the report was a letter from Kenton Lane Psychotherapy stating Father had been attending weekly individual therapy sessions between August and December 2018. Father and Shauna continued to consistently attend monitored visits with Richard. Father was engaged during visits, playing with Richard and changing his diaper. Shauna was often late to her visits. On one occasion Shauna attended one of Father's visits despite the criminal restraining order prohibiting contact between them. The monitor reported Father's attention became focused on Shauna once she arrived, and the monitor had to redirect Father to focus on Richard.

The Department concluded Shauna and Father had not learned appropriate coping skills, as evidenced by the July 2018 domestic violence incident and other altercations. Father had also admitted to the Department social worker that he had relapsed and used methamphetamine after his father's death in August 2018. The Department recommended termination of parental rights and adoption of Richard by Jody.

The section 366.26 hearing was held on January 7, 2019. The court summarily denied Shauna's and Father's section 388 petitions, finding neither had stated a prima facie case for holding a hearing. The court explained the parents had only

partially complied with their case plans and it was not in Richard's best interest to modify the previous order.

Shauna and Father requested the section 366.26 hearing be set for contest. As an offer of proof, the parents' attorneys stated each parent had consistently visited Richard. The court denied the request, noting neither parent had progressed beyond monitored visitation. Over Shauna's and Father's objections, the court terminated their parental rights, freeing Richard for adoption by Jody.

DISCUSSION

1. *The Juvenile Court Did Not Abuse Its Discretion in Summarily Denying the Section 388 Petitions*

Section 388 provides for modification of juvenile court orders when the moving party presents new evidence or a change of circumstances and demonstrates modification of the previous order is in the child's best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; see Cal. Rules of Court, rule 5.570(e).) To obtain a hearing on a section 388 petition, the parent must make a prima facie showing as to both elements. (*In re K.L.* (2016) 248 Cal.App.4th 52, 61 (*K.L.*); *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) The petition should be liberally construed in favor of granting a hearing, but "[t]he prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; accord, *K.L.*, at p. 61.) When determining whether the petition makes the necessary showing, the court may consider the entire factual and

procedural history of the case. (*K.L.*, at p. 62; *In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.)

We review the summary denial of a section 388 petition for abuse of discretion. (*K.L.*, *supra*, 248 Cal.App.4th at p. 61; *In re A.S.* (2009) 180 Cal.App.4th 351, 358.) We may disturb the juvenile court's exercise of discretion only in the rare case when the court has made an arbitrary or irrational determination. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

Shauna and Father contend their section 388 petitions sufficiently stated a prima facie case for modification of the court's order terminating reunification services. Shauna's petition identified three purported changes in circumstances: She had established a safe environment for Richard; had consistently tested negative for drugs; and had completed applicable therapy and classes, including parenting, anger management and domestic violence classes and individual therapy. However, the majority of these assertions were not supported by new evidence. Evidence of Shauna's negative drug tests, attendance at therapy and completion of classes had been submitted to the court at prior hearings. Despite having reviewed that evidence, the court concluded reunification services were properly terminated. Reargument of previously determined issues is not the proper function of a section 388 petition. (See *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451 [parent failed to state changed circumstances in support of section 388 petition where alleged facts had previously been submitted to court].) As for her contention she had established a safe environment for Richard, the petition was devoid of any information concerning Shauna's housing or employment situation. (See *K.L.*, *supra*, 248 Cal.App.4th at p. 62 [conclusory allegations insufficient to

state prima facie case in section 388 petition].) The only evidence in Shauna's petition that had arguably not been previously presented to the court was the assertion she had attended anger management classes at the Human Institute Program. However, the petition did not identify when the classes had been taken or how many sessions Shauna had attended. Without any supporting detail, the mere assertion that an unspecified number of classes had at some point been attended was insufficient to state a prima facie case of changed circumstances. (See *K.L.*, at p. 62.)

Father's petition, on the other hand, contained more detailed information regarding his activities since reunification services had been terminated. He asserted that, since the prior hearing, he had successfully completed a three-month inpatient substance abuse program, enrolled in a 52-week domestic violence program and re-enrolled in an outpatient substance abuse program. Father's progress is to be commended and is arguably sufficient for a prima facie showing of a change of circumstance. Nonetheless, four months of treatment in light of Father's extended history hardly qualifies as a sustained recovery.

The nature and extent of a parent's purported recovery from addiction and whether it is adequate to address the child's overriding interest in permanency and stability are precisely the appropriate focus of the second prong of the section 388 analysis, the child's best interests. (See *In re J.C.* (2014) 226 Cal.App.4th 503, 527 [a parent's petition to reopen reunification efforts "must establish how such a change [of circumstances] will advance the child's need for permanency and stability"]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 48 ["[a] petition [that] alleges merely changing

circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests"].) In this regard, Father's petition, as well as Shauna's, indisputably comes up short.

"[B]est interests is a complex idea" that requires consideration of a variety of factors. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531; see *In re Jacob P.* (2007) 157 Cal.App.4th 819, 832-833.) After the termination of reunification services, a parent's interest in the care, custody and companionship of the child is no longer paramount. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.) Instead, the focus shifts to the needs of the child for permanency and stability, and a rebuttable presumption arises that continued foster care is in the best interest of the child. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) Accordingly, in determining whether a section 388 petitioner has made a prima facie showing that modification is in the child's best interests, the juvenile court may consider the entire factual and procedural history of the case, including factors such as the seriousness of the reason leading to the child's removal, the reason the problem was not resolved, the passage of time since the child's removal, the relative strength of the parents' and foster parents' bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446-447; *In re Justice P.* (2004) 123 Cal.App.4th 181, 188-189.)

Here, Shauna's and Father's petitions make only conclusory allegations that reinstating family reunification

services, with its attendant delay in providing Richard with permanency and stability, would be in Richard's best interests. As discussed, such general assertions are not sufficient to sustain the parents' burden to make a prima facie showing that modification would be in Richard's best interests. (See *K.L.*, *supra*, 248 Cal.App.4th at pp. 62-63; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Neither parent provided any evidence that removing Richard from Jody's home would promote his best interests. Richard was placed in Jody's home immediately upon discharge from the hospital after his birth; hers is the only home he has ever known, and he exhibited a strong attachment to her. On the other hand, neither Shauna nor Father ever had custody of Richard, let alone an overnight or unmonitored visit. Father's petition implicitly acknowledges the lack of a parental relationship with Richard by stating more time was necessary "to build a healthy and positive bond" between them. The petitions contained no evidence that allowing Shauna and Father additional time to comply with their case plans would override the comfort and security of Richard's current placement. Accordingly, the petitions failed to state a prima facie case that modification was in Richard's best interests. (See *In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 252 ["children should not be made to wait indefinitely for mother to become an adequate parent"]; *In re Edward H.* (1996) 43 Cal.App.4th 584, 594 ["the prospect of an additional six months of reunification services to see if the mother [could comply with her case plan objectives] would not have promoted stability for the children and thus would not have promoted their best interests"].)

2. *The Juvenile Court Did Not Err in Terminating Shauna's and Father's Parental Rights*

a. *Governing law*

The express purpose of a section 366.26 hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) Once the court has decided to end parent-child reunification services, the legislative preference is for adoption. (§ 366.26, subd. (b)(1); *In re S.B.* (2009) 46 Cal.4th 529, 532 [“[i]f adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child”]; *In re Celine R.* (2003) 31 Cal.4th 45, 53 [“[I]f the child is adoptable . . . adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child”]; see *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307 [once reunification efforts have been found unsuccessful, the state has a “compelling” interest in “providing stable, permanent homes for children who have been removed from parental custody,” and the court then must “concentrate its efforts . . . on the child’s placement and well-being, rather than on a parent’s challenge to a custody order”]; see also *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299-1300; *In re G.B.*, *supra*, 227 Cal.App.4th at p. 1163.)

Section 366.26 requires the juvenile court to conduct a two-part inquiry at the selection and implementation hearing. First, it determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250;

In re D.M. (2012) 205 Cal.App.4th 283, 290.) Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B); see *Cynthia D.*, at pp. 250, 259 [when child is adoptable and declining to apply one of the statutory exceptions would not cause detriment to the child, the decision to terminate parental rights is relatively automatic].)

One of the statutory exceptions to termination is contained in section 366.26, subdivision (c)(1)(B)(i), which permits the court to order some other permanent plan if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” The exception requires the parent to prove he or she has maintained regular visitation and his or her relationship with the child “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [“the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer”].)

Section 366.26 directs the juvenile court in selecting and implementing a permanent placement plan for a dependent child to hold a hearing at which it reviews reports prepared by the Department and “receive[s] other evidence that the parties may present.” (§ 366.26, subd. (b).) Because the hearing may result

in termination of parental rights, a parent has due process rights at the hearing. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1120; *In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816.) Due process “requires, in particular circumstances, a “meaningful opportunity to cross-examine and controvert the contents of the report.” [Citations.] But due process is not synonymous with full-fledged cross-examination rights. [Citation.] *Due process is a flexible concept which depends upon the circumstances and a balancing of various factors.* [Citation.] *The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court.*” (*In re Tamika T.*, at p. 1120; accord, *Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146-1147 “[w]hile a parent in a juvenile dependency proceeding has a due process right to a meaningful hearing with the opportunity to present evidence [citation], parents in dependency proceedings ‘are not entitled to full confrontation and cross-examination’”]; *In re Jeanette V.*, at pp. 816-817.)

b. *The juvenile court did not err in failing to hold a contested hearing*

Shauna and Father contend the juvenile court violated their right to due process by denying their request for a contested selection and implementation hearing. Although a parent has a right to due process at a section 366.26 hearing, the court can require an offer of proof before setting a contested hearing on the parent-child relationship exception to termination of parental rights. (*In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1122 [“court can require an offer of proof to insure that before limited judicial and attorney resources are committed to a hearing on the issue, mother had evidence of significant probative value”].) “A proper

offer of proof gives the trial court an opportunity to determine if, in fact, there really is a contested issue of fact. The offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.” (*Id.* at p. 1124.) The question whether a parent’s due process rights were violated presents an issue of law, which we review de novo. (*In re A.B.* (2014) 230 Cal.App.4th 1420, 1434.)

As an offer of proof in support of her request for a contested hearing on the parent-child relationship exception, Shauna’s counsel stated, “Mother has consistently and regularly visited with the child Richard. Whenever there has been issue with scheduling and these visits haven’t happened, mother made up her visits.” For his offer of proof, Father’s counsel stated, “Father visits on a regular basis.” While these offers did not identify any specific facts or evidence that would be presented, the evidence contained in the Department’s reports arguably supported counsel’s assertions both parents had maintained regular visitation and contact with Richard.⁶ However, even if the offers

⁶ During the selection and implementation hearing the juvenile court found Shauna “visits sporadically when possible.” The evidentiary basis for this finding was not articulated and does not appear to be supported by the record, which indicates Shauna regularly visited Richard throughout the pendency of this case despite some concern on the part of the TIES for Families therapist that Shauna had difficulty maintaining a consistent schedule. For example, the most recent Department report stated Shauna’s visits were consistent, but she often arrived more than 20 minutes late. However, Shauna has not argued the court erred in finding she visited only sporadically; nor does the court’s finding, even if error, affect our conclusion Shauna failed to present an adequate offer of proof to warrant a contested hearing.

of proof were sufficient to satisfy the first prong of the analysis, they were insufficient to satisfy the second prong, whether there is a sufficiently strong bond between the parent and child that the child would suffer detriment from its termination. On this point the offers of proof were entirely silent. The offers identified no evidence that could establish Shauna or Father occupied a parental role in Richard's life or that any benefit of a continued relationship with them would outweigh the benefits of permanent placement with Jody, with whom Richard had lived essentially all his young life and with whom he was closely bonded. Accordingly, the trial court did not err in finding the offers of proof insufficient to require a contested hearing. (See *In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1124; cf. *In re Grace P.* (2017) 8 Cal.App.5th 605, 614 [offer of proof was sufficient where "Father offered his testimony about the positive quality of his visitation, how he parented all three children during visits, and how the children considered him to be a father figure"].)

c. The juvenile court did not err in ruling Father had failed to establish the parent-child-relationship exception to termination of parental rights

Father contends he established the existence of a beneficial parental relationship with Richard within the meaning of section 366.26, subdivision (c)(1)(B)(i), because he maintained regular visitation, played with Richard and changed his diaper during visits, and the visits were positive overall. However, the record does not compel a finding Father maintained a parent-child relationship with Richard.

A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. (See *In re Angel B.* (2002)

97 Cal.App.4th 454, 466 “[a] biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent”].) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy “a parental role” in the child’s life.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) Factors to consider include “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.”” (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.) Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The parent has the burden of proving the statutory exception applies. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646; *In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) Once a court has found regular visitation occurred, the court’s decision a parent has not satisfied his or her burden may be based on either or both of two component determinations—whether a beneficial parental relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); see *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622;

In re Bailey J. (2010) 189 Cal.App.4th 1308, 1314.) When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (*In re Breanna S.*, at p. 647; *In re I.W.*, at pp. 1527-1528.) When the juvenile court concludes the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (*In re K.P.*, at pp. 621-622; *In re Bailey J.*, at pp. 1314-1315.)⁷

While Father consistently visited with Richard at the time of the section 366.26 hearing, he had been incarcerated for the first year of Richard's life and never progressed to unmonitored visitation. The fact Father played with Richard and changed his diaper does not compel a finding a parental relationship existed absent some other evidence of a "significant, positive, emotional attachment from child to parent." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396; see also *In re K.P.*, *supra*, 203 Cal.App.4th at p. 621 ["loving and frequent contact" and an "emotional bond" not per se sufficient to establish parental relationship].) Nothing in the record provides such evidence. To

⁷ The Supreme Court recently granted review in *In re Caden C.* (review granted July 24, 2019, S255839) and asked the parties to brief and argue the following issues: "(1) what standard governs appellate review of the beneficial parental relationship exception to adoption; and (2) whether a showing that a parent has made progress in addressing the issues that led to dependency is necessary to meet the beneficial parental relationship exception."

the contrary, there was evidence that during a recent visit Father became distracted by Shauna's presence and had to be reminded to focus his attention on Richard. While Richard may have enjoyed his visits with Father, there is no evidence Richard looked to Father for emotional support or comfort. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 557 [mother did not occupy parental role where no evidence she met children's emotional and physical needs]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [parents did not occupy parental role where aunt was "comforting and nurturing [children] by providing their day-to-day care"]; *In re Autumn H., supra*, 27 Cal.App.4th at p. 576 [no parental bond where relationship was one of friendship, not parent-child].)

Even if Father could establish a parental bond, however, the juvenile court's determination the benefit to Richard from continuing the relationship did not outweigh the well-being he would gain from adoption by Jody was well within the court's discretion. (See *In re Breanna S., supra*, 8 Cal.App.5th at p. 648; *In re Marcelo B., supra*, 209 Cal.App.4th at p. 643; *In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Father does not deny Richard has a good relationship with Jody and is thriving in her home. Further, Father cites no evidence, in the record or in his offer of proof during the hearing, regarding Richard's attachment or reaction to Father. Instead, Father cites only his own commitment to Richard and the fact that their twice weekly visits were positive. This evidence does not establish the relationship conferred benefits to Richard more significant than the permanency and stability offered by adoption.

To the contrary, the evidence presented to the juvenile court demonstrated Father's inability to provide stability. In the six months prior to the selection and implementation hearing,

Father had been arrested for domestic violence involving Shauna and for unlawful taking of a vehicle; he violated the resulting protective order prohibiting contact with Shauna; he missed multiple drug tests, acted aggressively toward the social worker, prematurely left the bridge housing program in which he was placed, and admitted to having used methamphetamine. This record established that, despite having almost two years to address the issues that caused Richard's removal, Father was still in the early stages of dealing with his substance abuse and anger management issues.

In contrast, Richard's placement with Jody has been a stable and positive influence. Richard is bonded with Jody, and she takes an active role in his development and activities. In sum, the juvenile court did not abuse its discretion when it concluded the benefit of the relationship Richard had with Father did not outweigh the benefit that would come from adoption. (See *In re Noah G.*, *supra*, 247 Cal.App.4th at pp. 1301-1302 [beneficial parental relationship did not outweigh permanency when mother did not follow up on case plan, failed to comply with court orders, missed drug tests, tested positive during case and had only monitored visitation]; *In re L.S.* (2014) 230 Cal.App.4th 1183, 1200 [positive aspects of parents' visits did not outweigh benefit of permanency].)

DISPOSITION

The January 7, 2019 orders of the juvenile court denying the section 388 petitions for modification of prior court orders and terminating parental rights are affirmed.

PERLUSS, P. J.

We concur:

FEUER, J.

STONE, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.